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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,484	10/17/2001	Mark B. Littlejohn	2312 (FJ-00-39)	5150
40256	7590	05/19/2004	EXAMINER	
FERRELLS, PLLC P. O. BOX 312 CLIFTON, VA 20124-1706			MAI, TRIM	
			ART UNIT	PAPER NUMBER

3727

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/978,484	Applicant(s) LITTLEJOHN ET AL.	
	Examiner Tri M. Mai	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-6,8-38,50-86,108 and 109 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-6,8-38,50-86,108 and 109 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. ____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03/05/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Claims 39-49, and 87-107 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 11.

Specification

2. Due to the complexity of the disclosure, applicant is requested to provide a table showing the formulas of the various claimed element in term of the variable disclosed in Figs. 4.

Claim Rejections - 35 USC § 112

3. Claims 12-16, 25, 67-68, and 80-84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how the excess paperboard in term of inches and percentage in claims 12-16, 67-68, and 80-84 are obtained by the variables shown in Fig. 4.

Claim Rejections - 35 USC § 103

4. Claims 1-6, 8-20, 50-52, 54-86, 108, and 109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marx et al. (4721499). Marx teaches a container having a planar bottom portion, upwardly extending sidewall, outwardly extending flange portion with densified regions formed from a plurality of paperboard layers with height to diameter ratio ($H/2R=.05-.4$); and flange width to diameter ratio ($(Lr+F)/2R=.005-.4$). With respect to the new limitation of the container with SSI Ribidity of at least 500 grams at .5 inch deflection. The new limitation does not impart any structure over the container in Marx. Furthermore, the container in Marx would

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inherently have the behavior as set forth by the claims. The claim(s) must be distinguished from the prior art in term of structure rather than function. In re Danly, 263 F.2d 844, 847(CCPA 1959). Furthermore, apparatus claims cover what a device is, not what a device does, Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F. 2d 1464, 1469 (CCPA 1935). See MPEP 2114.

Regarding claims 7-9, note col. 6, lines 23.

Regarding claims 50, 52, the angle $=90-\Delta=0-60$ degrees

Regarding claims 54, 55, $C1/2R=.025-.15$.

Regarding claims 56, $C2/2R=.005-.05$

Regarding claim 58, $2R=4-16$ inches, $H=.2-6.4$

Regarding claims 2, 3, 72, 73, it would have been obvious to one of ordinary skill in the art to extend to at least about 75 percent of the length of the scores to provide the desired rigidity of the container.

Regarding claims 10-11, 61-64, 78-79, it would have been obvious to one of ordinary skill in the art to provide the blank having a width from .01 inches to about .05 inches to provide the desired dimension for the container.

Regarding claims 12-16, 67-68, 80-84, to the degree that the excess paperboard per score is based on the relationship with the initial blank and does not impart any structural differences over the dimension as specified in Marx. Furthermore, it would have been obvious to one of ordinary skill in the art to provide the claimed value of the percentage excess paperboard per score to provide the desired dimension for the container.

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Regarding claims 38, 68, 71, and 86, it would have been obvious to one of ordinary skill in the art to provide scores to extend to at least about 75 percent of the height of the sidewall to provide the desired rigidity of the container.

5. Claims 21-38, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marx et al. (4721499) in view of Sanstrom. Marx meets all claimed limitations except for the inorganic pigment. Sanstrom teaches that it is known in the art to provide inorganic pigment in Marx as taught by Sanstrom to provide the desired printing pigment for the decorating the container.

With respect to the coating being water-based coating, it would have been obvious to one of ordinary skill in the art to provide water-based press-applied overcoat in Marx as taught by Sanstrom to provide the desired coating for the container.

Note height to diameter ratio ($H/2R=.05-.4$); length of lip to diameter ($LH/2R=.01-.05$)

Regarding claims , it would have been obvious to one of ordinary skill in the art to extend to at least about 75 percent to provide the desired rigidity of the container.

Regarding claims 30-31, it would have been obvious to one of ordinary skill in the art to provide the blank having a width from .01 inches to about .05 inches to provide the desired dimension for the container.

Regarding claims 32-36, to the degree that the excess paperboard per score is based on the relationship with the initial blank and does not impart any structural differences over the dimension as specified in Marx. It would have been obvious to one of ordinary skill in the art to provide the claimed value of the percentage excess paperboard per score to provide the desired dimension for the container.

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Regarding claim 38, it would have been obvious to one of ordinary skill in the art to provide scores to extend to at least about 75 percent of the height of the sidewall to provide the desired rigidity of the container.

Regarding claim 53, Sanstrom teaches that it is known in the art to provide a angle approximately 5 degrees (6-10.5). It would have been obvious to one of ordinary skill in the art to provide approximate 5 degrees in Marx as taught by Sanstrom to provide the desired angle for the flange.

Response to Arguments

6. Applicant's arguments filed 02/27/04 have been fully considered but they are not persuasive. It is noted that applicant's remarks are not fully responsive with respect to the Examiner's request.

With respect to the rejection over Marx, as set forth above, the new limitation does not impart any structure over the container in Marx. Furthermore, the container in Marx would inherently have the behavior as set forth by the claims. The claim(s) must be distinguished from the prior art in term of structure rather than function. In re Danly, 263 F.2d 844, 847(CCPA 1959). Furthermore, apparatus claims cover what a device is, not what a device does, Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F. 2d 1464, 1469 (CCPA 1935). See MPEP 2114..

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai 
Primary Examiner
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